

ABSTRACT

The Possibilities of Using Analogy in Public Law

Argument by analogy plays an important role in the law. It enables to complete legal system so that it presents system that is uniform and as to its values internally coherent. One of the basic knowledge of law faculty student is that statutory interpretation and application of law by analogy counts among logical methods of interpretation. However, this finding is being ever more frequently questioned in the recent literature. Rather than logical structure of an argument by analogy it is its logical nature that is being emphasized.

The main aim of this thesis is to describe the structure of analogy as a general method of reasoning. So defined, analogy will be subsequently applied to the options of using analogy in public law as it is not possible to use analogy to the same extent in all fields of law. Generally speaking, the use of analogy in public law is more restricted than it is in private law and in particular fields of public law the restriction of the use of analogy are even stricter. Throughout the thesis I also attempt to support my theoretical conclusions with the relevant case law.

The text is divided into four main chapters. In the introductory chapter I define analogy as a general method and further address its use in law into three basic categories – analogy intra legem, analogia legis, and analogia iuris. I conclude the chapter with situations to some extent similar to analogy and with limitations of analogy.

The second chapter is dealing with above mentioned problematic of including analogy in general methodology of legal interpretation.

In the third chapter I will address the issue of gaps in the law. Topic closely related to analogy for it is one of necessary conditions for its legit use. In this chapter I will shortly describe two most widely accepted concepts of the gaps in the law.

In the final chapter I will try to apply my conclusions about what the analogy in law is onto the restrictions of the public law regarding the use of analogy. I will focus in particular on those fields of public law in which the possibilities of using analogy are restricted the most, i.e. the criminal law, the administrative delict law, the tax law, and the constitutional law.